

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 December 2016

Public Authority: City of Bradford Metropolitan District Council
Address: City Hall
Bradford
West Yorkshire
BD1 1HY

Decision (including any steps ordered)

1. The complainant has requested information regarding alleged loans provided to Bradford Bulls Rugby team. The City of Bradford Metropolitan District Council responded to parts of the request and withheld some information under the exemptions for personal data (section 40(2)) and prejudice to commercial interests (section 43(2)).
2. The Commissioner's decision is that City of Bradford Metropolitan District Council has correctly withheld the information under section 40(2) of the FOIA.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 24 May 2016, the complainant wrote to City of Bradford Metropolitan District Council (the "council") and requested information in the following terms:

*"(1) The amount of money loaned by Bradford Council to Bradford Bulls
(2) The amount of money loaned by Bradford Council to OK Bulls
(3) The amount of money loaned by Bradford Council to Omar Khan
(4) Please also provide the terms of the loan(s), the amount that has been repaid thus far as well as the schedule of payments due to be made."*
5. The council responded on 21 June 2016. It stated that, in relation to request parts 1 and 3 no money had been loaned. In relation to parts 2 and 4 of the request, the council confirmed that the information was being withheld under section 40(2) and section 43(2) of the FOIA.
6. Following an internal review the council wrote to the complainant on 21 July 2016. It stated that it was maintaining its position.

Scope of the case

7. On 26 July 2016 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. The Commissioner confirmed with the complainant that her investigation would consider whether the council has correctly applied exemptions to withhold the information in parts 2 and 4 of the request.

Reasons for decision

Section 17 – refusal notice

9. Where a public authority is relying on one or more exemptions to withhold information specified in a request it must, under section 17(1) of the FOIA, issue a refusal notice which:
- "(a) states that fact,*
- (b) specifies the exemption in question, and*
- (c) states (if that would not otherwise be apparent) why the exemption applies."*
10. In this case the council issued a refusal notice which identified the exemptions which were being relied upon in withholding the information in request parts 2 and 4. However, the notice did not clearly link the exemptions being applied to the relevant request part or parts. The Commissioner considers that the refusal noticed failed, therefore, to properly explain why the exemption(s) applied.
11. In view of the above the Commissioner has concluded that the council failed to issue a proper refusal notice and breached section 17(3) of the FOIA. As the council has now confirmed that the exemptions in both section 40(2) and section 43(2) have been applied to withhold the information in part 2 and 4 of the request the Commissioner does not require the council to take any steps in this regard.

Section 40(2) – Personal Data

12. The council has withheld the following information under section 40(2):
- (2) The amount of money loaned by Bradford Council to OK Bulls*
- (4) Please also provide the terms of the loan(s), the amount that has been repaid thus far as well as the schedule of payments due to be made."*
13. Section 40(2) provides that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the FOIA would breach any of the data protection principles or section 10 of the Data Protection Act 1998 ('the DPA').
14. In order to rely on the exemption provided by section 40(2), the requested information must therefore constitute personal data as defined by the DPA. Section 1 of the DPA defines personal data as follows:

“personal data” means data which relate to a living individual who can be identified –

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.”

Is it personal data?

15. Having viewed the requested information the Commissioner is satisfied that it relates to a living individual. She is also satisfied that, by virtue of their association with the company identified in the request, which is a matter of public record, the individual can be identified from the data.

Would disclosure of the information contravene any of the data protection principles?

16. Secondly, once the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the data protection principles under the DPA. In this case that the council said that disclosure would breach the first data protection principle. The first data protection principle states that:

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

(a) at least one of the conditions in schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.”

17. In deciding whether disclosure of this information would be unfair, the Commissioner has taken into account the nature of the information, the reasonable expectations of the data subject, the consequences of disclosure on the data subject and balanced the rights and freedoms of the data subject with the legitimate interests in disclosure.
18. The Commissioner considers that these factors are often interlinked. For example, what other information is available in the public domain may have a bearing on the consequences of disclosure as well as on the reasonable expectations of the individual.

Nature of the information and reasonable expectations

19. In this case the withheld information relates to the value of a loan, the terms under which the loan was given and the specific details of the loan's repayment.
20. The Commissioner considers that it would not be within a person's reasonable expectations that information relating to their personal finances would be disclosed to the world. In much the same way, the Commissioner considers that one would not expect a bank to disclose details of loans provided to private individuals or information relating to their arrangements for repayment. It seems clear that disclosing such information would provide an intrusive and unreasonable insight into a data subject's financial situation.
21. The Commissioner is mindful that, in this case, the loan has been provided by a public authority and involves the expenditure of public money. However, the Commissioner does not consider that this detracts from the data subject's reasonable expectation of privacy in this case.

Possible consequences of disclosure

22. In assessing fairness, authorities should consider the likely consequences of disclosure in each particular case. Personal data must be processed fairly and not used in ways that have unjustified adverse effects on the individuals concerned.
23. In this case the council has argued that disclosing the amount of the loan, the amount paid and yet to be paid would provide invasive insights into the individual's private finances and personal life and would result in unwarranted distress.
24. It may be argued that the consequences of disclosure would be less serious if the same or similar information is already available in the public domain. Whether this is true in any particular case will depend on a number of factors.
25. In this case the complainant has pointed to the availability of information regarding the value of the loan in the public domain and other speculative reports about the relevant matters. The council has acknowledged the existence of articles in local newspapers regarding the loan but has stated that confirming that value of the loan and the amount paid would enable the amount still owed to be maintained. The council considers that disclosing the information would exacerbate the intrusion into the individual's personal life and intensify the distress at having their financial situation scrutinised in public.

26. Having considered the availability of information in the public domain the Commissioner has no evidence that this information was explicitly placed there by the council (the council has stated that it has not done this) or indeed with the consent of the data subject. The Commissioner considers that, in this case, the fact that relevant information is in the public domain does not give the council licence as a data controller to confirm the accuracy or otherwise of such reports or to otherwise risk exposing the data subject to more unwarranted distress.

Balancing rights with legitimate interests in disclosure

27. Despite the reasonable expectations of individuals and the fact that damage or distress may result from disclosure, it may still be fair to provide the information if there is an overriding legitimate interest in disclosure. Under the first principle, the disclosure of the information must be fair to the data subject, but assessing fairness involves balancing their rights and freedoms against the legitimate interest in disclosure to the public and the private interests of the requester.
28. Examples of a legitimate public interest in disclosure include the general public interest in transparency, public interest in the issue the information relates to and any public interest in disclosing the specific information. There may for example be occasions when the requirement to demonstrate accountability and transparency in the spending of public funds will outweigh the rights of the individuals.
29. In this case the Commissioner is mindful that there is a general public interest in transparency and accountability, particularly where this relates to public expenditure. She also notes that, in this specific case, there is particular local interest in OK Bulls Ltd and the council's involvement in its fate. However, the factors to be taken into account when considering the exemption have to focus on the implications for the individual. Whilst there is undoubted weight to be ascribed to the way in which the council have acted and the use of public funds; there is also a need to balance that with the point that the council are satisfied that the loan guarantor arrangements are in place and being honoured. To go beyond this, and whether it is necessary to, are where the focus of the exemption analysis has to lie.
30. The council has argued that, if the information were to be disclosed, it would have an unjustified adverse effect on the data subject as opposed to, for example, other council debtors which might not be private individuals. The council has acknowledged that the information relates to a loan of public money. However, it has stated that the data subject has not consented to disclosure and argued that there is no legitimate public interest in disclosing the information, at least not to a degree

which would outweigh the data subject's rights to privacy and the potential adverse effects on their personal life.

31. Although assessing fairness involves balancing the rights of data subjects against the legitimate interests in disclosure, this is not the same as carrying out the public interest test for qualified exemptions in FOIA. The balancing exercise in section 40 is carried out in order to decide whether the absolute exemption in section 40(3) is engaged. In particular, there is no assumption of disclosure as there is with qualified exemptions. Personal data can only be disclosed if to do so would not breach the DPA principles. If the public authority discloses personal data in contravention of DPA principles, it is in breach of its duty as a data controller.
32. Having considered the nature of the information, the reasonable expectations of the data subject and the legitimate interests in disclosure the Commissioner considers that, in this case, it would be unfair to disclose the requested information and it would be likely that disclosure would result in a breach of the first data protection principle.
33. The Commissioner has, therefore, concluded that the council correctly withheld the information under section 40(2) of the FOIA. In light of this, she has not gone on to consider the council's application of section 43(2).

Right of appeal

34. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

35. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
36. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Andrew White
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